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SECRETARY OF STATE

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
BEFORE THE TENNESSEE WATER QUALITY CONTROL BOARD

IN RE THE MATTER OF:)	
)	DIVISION OF WATER
)	POLLUTION CONTROL
STERLING B. MARLIN)	
)	
RESPONDENT)	CASE NO. 07-097D
)	DOCKET NO.04.30-096173A

AGREED ORDER

Following the issuance and appeal of this order, the parties have come to an agreement and have proposed this Agreed Order for the Board's approval. The agreement of the parties to this order is indicated by the signature of their respective counsel, below. The Respondent neither admits nor denies the violations contained herein, except for the jurisdictional allegation in Paragraph 2 and to the terms of the order for which the respondent Admits. After review of this proposed order, the board approves this agreement and accordingly, the Board makes the following Finding of Fact, Conclusions of Law and Orders and Assessment as follows:

FINDINGS OF FACT

1. Sterling B. Marlin, (hereinafter the "Respondent") owns property located at the intersection of Nashville Highway and Columbia Rock Road in Maury County, Tennessee, a 52 acre parcel listed as the Harvey Tract on County land records (hereinafter the "site").
2. Whenever the commissioner has reason to believe that a violation of the Water Quality Control Act of 1977 (hereinafter the "Act"), Tennessee Code Annotated (T.C.A.)

§ 69-3-101 et seq, has occurred or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as Chapters 1200-4-3-4 of the *Official Compilation: Rules and Regulations of the State of Tennessee*. Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director of the division any of the powers, duties, and responsibilities of the commissioner under the Act.

3. Haley Branch, referred to herein, is “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. In accordance with Department Rule 1200-4-4, “Use Classifications for Surface Waters,” these water bodies have been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

4. Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the Tennessee General Permit for Storm Water Discharges Associated with Construction Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI).

5. On February 14, 2007, division personnel conducted an inspection at the site and discovered that un-authorized land disturbance activities were being conducted. Fill was being accepted by Respondent to raise the grade of the property to road level, as the Respondent later explained. Grading and fill activities were underway without effective Erosion Prevention and Sediment Control measures (EPSCs) installed to prevent sediment migrating from the site. Division personnel informed the Respondent's employees at the site that coverage under the TNCGP was required before work of that nature could be performed. A subsequent file review confirmed that coverage for the site under the TNCGP was not active.

Respondent had previously obtained a Notice of Coverage for stormwater discharges for the approximately 52 acres adjacent to Haley branch. When land disturbance was completed, Respondent received a notice of termination from the Division. When respondent resumed accepting fill material, respondent contends that he had not intended to impact more than one acre.

6. On February 16, 2007, a Notice of Violation (NOV) was issued to the Respondent for the violations observed during the February 14, 2007, site inspection. These violations included clearing, grading, filling, excavation, and other construction activities without adequate control measures, and without permit authorization.

7. On February 16, 2007, the Respondent's site engineer contacted the division via telephone to discuss obtaining coverage under the TNCGP for the activities planned to occur at the site. The Respondent's site engineer informed the division that it would be at least a week before he could submit a NOI. Division personnel asked if the construction activities at the site would cease until that time, and were informed that they would

probably continue. It was stated that the Respondent temporarily had access to free fill material and would continue to receive and place that material in the interim.

8. On February 23, 2007, the Respondent filed a Notice of Intent together with a Stormwater Pollution Prevention Plan that addressed the entire tract that had previously had permit authorization and which was terminated. The SWPPP included the new area adjacent to the Nashville Highway and Haley Branch that is the subject of this order.

9. On February 28, 2007, the division received a voicemail from the Respondent stating that his engineer had submitted the NOI to obtain TNCGP coverage. Division personnel attempted to contact the Respondent and left a message informing him that the NOI had been received, but that activity should not be occurring at the site until the NOI was processed and coverage had been issued.

10. On March 1, 2007, the division contacted the Respondent's engineer to discuss the NOI package that had been submitted on behalf of the Respondent. The Respondent's engineer informed the division that work would probably resume at the site on the following Monday, even after being informed that coverage would not be issued by that date.

11. On March 1, 2007, division personnel conducted a follow up inspection at the site during a rain event. Sediment was observed migrating off the property and into waters of the state. EPSCs had not been installed in many locations at the site where needed, and were inadequate in the few locations where they had been installed.

12. On March 6, 2007, division personnel re-visited the site, where work was continuing. Also on March 6, 2007, Division personnel contacted the Respondent's engineer to discuss conditions at the site and the violations observed. The division was

informed that additional EPSCs would be implemented and others re-installed where necessary, and that a re-inspection would be requested upon completion. The division informed the Respondent's representative that permit coverage would not be issued until EPSC measures were corrected and adequate for the site.

13. On March 7, 2007, division personnel met with the Respondent at the site to discuss the need for additional EPSCs and the fact that construction activities had continued without permit coverage.

A second NOV was issued to the Respondent for the continuing violations observed on March 1, 6, and 7, 2007.

14. Since that time, the Division field office has reported and this Board finds that Mr. Marlin complied with the corrective requirements of the order, obtained authorization, put in satisfactory erosion control and has now stabilized the site. A representative of the Respondent's has completed the soils erosion and prevention workshop as called for in the order.

CONCLUSIONS OF LAW

15. By conducting activities without coverage under the Tennessee General Permit for Storm Water Discharges Associated with Construction Activity, the Respondent has violated T.C.A. §§ 69-3-108(a)(b) and 69-3-114(b).

§ 69-3-108 states, in part:

- (a) Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit

with the commissioner or, when necessary, for modification of such person's existing permit.

(b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

(1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;

(4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;

(6) The discharge of sewage, industrial wastes, or other wastes into water, or a location from which it is likely that the discharged substances will move into waters;

§ 69-3-114(b) states, in part:

(b) In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

16. By failing to install erosion prevention and sediment control devices at a land disturbance activity, the activity described herein did or was likely to cause an increase in the discharge of wastes into the waters of the state. Therefore, the Respondents have violated T.C.A. Sections 69-3-108(b) and 69-3-114(b), as referenced above.

17. By causing a condition of pollution to Haley Branch, the Respondent has violated T.C.A. § 69-3-114(a).

§ 69-3-114(a) states, in part:

- (a) It is unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in Section 69-3-103 (22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

1. Whereupon, after deliberation, the board hereby orders and assesses as follows.

The Respondent Sterling Marlin is assessed the sum of SIX THOUSAND SEVEN HUNDRED AND EIGHTY DOLLARS (\$6,780.00) due and payable within thirty days of entry of this order.

2. The Respondent, by entering into this Agreed Order knowingly and voluntarily waives his right of appeal as otherwise provided in the Uniform Administrative Procedures Act at T.C.A 40-5-301 et. seq and the Water Quality Act at T.C.A 69-3-111.

RESERVATION OF RIGHTS

By agreeing to this order, the parties agree that the implementation of the requirements in this order is only for the purposes of this action. The Respondent neither

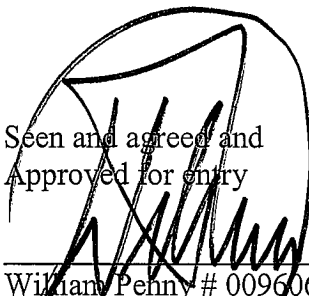
admits nor denies the allegations and violations set out in this order and the parties agree that this Order cannot be used by any third party as evidence of noncompliance with the laws or regulations.

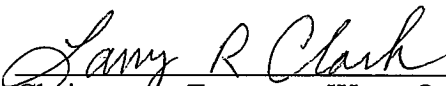
REASON FOR DECISION

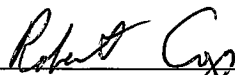
The Board finds this a fair and reasonable resolution of the issues in this matter and conserves the resources of the parties and is protective of the environment. Respondent is of the opinion that it has valid and legal defenses to the position of the Commissioner as represented in the Commissioner's order. The Board approves this Agreed Order and recognizes that such resolutions conserve the resources of the parties and the Board.

This June 17, 2008

Seen and agreed and
Approved for entry


William Penny # 009606
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Nashville, TN 37219
(615) 782-2308
Attorney for Respondent Sterling Marlin


Chairperson, Tennessee Water Quality
Board


Robert Cox, BPR 012893
Attorney for TDEC

Entered in the Office of the Secretary of State Administrative Division on this

17th day of June.

Thomas Stovall

Thomas Stovall, Director
Administrative Procedures Division

PAYMENT

Payment of the civil penalty shall be made to the "Treasurer, State of Tennessee".

All correspondence, including the initial civil penalty payments, should be addressed to Robert Cox, Office of General Counsel, Tennessee Department of Environment and Conservation, 401 Church Street, 20th floor, Nashville, Tennessee 37243-1549. The case name and reference number, "WPC07-097" should be placed on all payments and all correspondence concerning this matter, to insure that the payment is properly credited.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing order was sent to counsel for Respondent by certified mail this June 18, 2008 at the following address:

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Robert Cox

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4/28/08